

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1227 of 2016**

Devendra Kumar Barley S/o Shri Mohardas Barley, Aged About 27 Years R/o Ambedkar Chowk, Kabirdham, Civil & Revenue District Kabirdham, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh Through District Magistrate, Kabirdham, District Kabirdham, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Pallav Mishra, Advocate.
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/11/2016

1. The present petition under Section 482 CrPC has been preferred seeking for quashment of order dated 13.10.2016 passed by the Commissioner, Excise Raipur, in Appeal Case No.REC-20/2016-17 as also against the order passed by the Collector, Kabirdham, in Case No.54B-121/2015-16, dated 07.04.2016.
2. The grievance of the petitioner in the instant case is that, he was an accused in criminal case No.1621 of 2015 for allegedly having committed an offence under Section 34(2) of the Chhattisgarh Excise Act. According to the applicant, he was implicated in a case for carrying 9 bulk liters of country made liquor on 25.10.2015 at around 1:40 pm. A case was registered and the vehicle i.e. Maruti Van bearing registration

No.CG-09-0712 in which he was allegedly carrying the liquor was also seized.

3. According to the applicant, during the course of trial of the case before the court below i.e. court of Chief Judicial Magistrate Kabirdham has initiated a confiscation proceeding vide case No.54B-121/2015-16 and the Collector, Kabirdham, vide order dated 07.04.2016 had ordered for confiscation of the said Maruti Van. Against the said order of confiscation, the applicant has preferred an Appeal before the Commissioner Excise where the appeal was registered as Appeal Case No. REC-20/2016-17 and the appellate court also has rejected the appeal upholding the order of Collector confiscating the vehicle.
4. Learned counsel appearing the applicant submits that infact in the criminal case for the offence under Section 34(2) of the Chhattisgarh Excise Act, ultimately the applicant has been acquitted from the said charge vide order dated 29.09.2016 by the Chief Judicial Magistrate, Kabirdham. The court below has also ordered that since the offence has not been established/proved against the accused/applicant, he would be entitled for release of the vehicle also. He further submits that though the order of acquittal has been passed after the order of confiscation has been passed by the Collector, the confiscation order could not have been affirmed by the appellate authority in the light of fact that order of acquittal and direction for release of vehicle was passed prior to appeal being decided. Though there is no proof brought by the applicant of the order of the trial court being produced before the appellate authority.

5. It is further submitted that now the appeal is also rejected and the order of acquittal has been passed in favour of the applicant. Further, in the acquittal order dated 29.09.2016 itself it is directed for release of the said vehicle of the applicant, a direction may be issued for release of the vehicle immediately. It is also submitted that the vehicle is lying idle in possession of respondent since 25.10.2015 and no fruitful purpose would be served if the vehicle remains idle in the custody of the police personnels exposed to the extreme weather conditions. The vehicle would get decayed day by day and would further deteriorate by passage of time to the extent that it would become unusable after some time and therefore in the interest of justice the vehicle may be released to the applicant.
6. Learned counsel for the State, taking into consideration the judgment of acquittal and the observations made by the Chief Judicial Magistrate in the order dated 29.09.2016, submits that the State has no objection if the said vehicle is ordered to be released.
7. Having considered the submissions put forth on either side and on perusal of the records particularly the fact that the criminal case in which the applicant was subjected to trial for the offence under Section 34(2) of the Chhattisgarh Excise Act having ordered for his acquittal and also considering the observations made by the Magistrate that the vehicle involved in the case also be released, this court has no hesitation in reaching to the conclusion that the order passed by the Collector, Kabirdham dated 07.04.2016 as well as the order dated 13.10.2016

passed by the Commissioner, Excise are not sustainable. It is settled law that unless there is an order of conviction or the charge under the Excise Act is proved, the order of confiscation would not be sustainable.

8. For the foregoing reasons, both the orders dated 13.10.2016 and 07.04.2016 (Annexure P/1 & P/2) are set aside/quashed and it is directed that the applicant shall be entitled for the release of the vehicle i.e. Maruti Van No. CG-09-0712 forthwith. No order as to costs.

Sd/-

(P.Sam Koshy)

Judge

inder